

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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JOEL F. HOLUBAR,	:	
&	:	
MARIANA H. HOLUBAR,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	03-CV-12404-NG
KENT KHOLBERGER;	:	
THE CHASE FREEDMAN-FAMILY TRUST;	:	
&	:	
M/Y CHEROSA, <i>in rem</i> ,	:	
	:	
Defendants.	:	
	:	
-----X	:	

MEMORANDUM IN OPPOSITION TO DEFENDANTS' CROSS MOTION

This Memorandum, is submitted in Opposition to defendants' cross motion to strike which is without any legitimate basis and questionable in its own right.

Pursuant to Local Rules 7.1 and 37.1, Kurt Bratten, Esq. and Bjorn J. Holubar, Esq. I initiated and held telephone conferences with Edward Radzik, Esq. and then Curtis Pfunder, Esq. at approximately 3:40 p.m., June 14, 2004 and 2:00 p.m., June 15, 2004, see affidavit of Bratten and Affirmation of Holubar. The conferences with Messrs. Radzik and Pfunder were held concerning the disputed discovery matters that are the subject of Plaintiffs' Motion Pursuant to Rule 37.

During the above-referenced conferences, Plaintiffs' counsel attempted, in good faith, to resolve and/or narrow the areas of disagreement to the greatest extent possible with counsel to the Defendants.

On Tuesday, June 15, 2004 12:00 AM, Mr. Holubar served by email Plaintiffs' 1) Notice of Motion and Motion, 2) Affirmation in Support, 3) Memorandum of Law in Support, 4) Rule 7.1 Certification, 5) Affidavit of Joel F. Holubar and 6) Certificate of Service on Mr. Pfunder and Bratten. The same was also dispatched via regular mail on June 14, 2004.

On June 16, 2004, Mr. Bratten prepared and sent a letter to the Office of the Civil Clerk for the United States District Court for the District of Massachusetts.

Pursuant to Mr. Bratten's June 16, 2004 letter, copies of Plaintiffs' Motion Pursuant to Rule 37 - including a Local Rule 7.1 Certificate of Compliance - were filed with the Court, and defendants' counsel provided copy of the same.

Defendants' assertions the Plaintiffs' motion is premature etc. is wholly incorrect and misses the most salient point – the time by which defendants were to have responded expired.

Defendants' Motion for an extension was moot as their time to request the same has expired.

Addressing the depositions, had Plaintiffs' counsel not initiated a call to defendants

Plaintiffs would have incurred costs and inconvenience for no reason whatsoever.

Defendants have and continue to approach this matter with callous disregard for the facts and schedules set by the Court and others. As such, defendants seek to and have effectively delayed and circumvents this Courts Scheduling Order and time schedules.

This will further serve as Plaintiffs' objection to the Friday, July 9, 2004, 5:37 pm phone call of Mr. Pfunder whereby Plaintiffs' counsel was informed that Mr. Pfunder was leaving for "a long planned vacation" and Mr. Radzik predisposed. Had this actually been the fact why then did defendants' counsel wait until: after business hours, on the Friday preceding the scheduled hearing to inform anyone of the same. Additionally, while never having been served on counsel defendants directed a communication to the Court prior to and without consultation of Plaintiffs' counsel. Plaintiffs object to defendants' requested adjournment and would respectfully request the Court instruct Mr. Radzik, who is admitted *pro hac vice* in this matter, and who is a partner is a many member firm, to appear for the scheduled hearing on July 15.

Defendants Opposition and Cross Motion containing assertions regarding the lack of compliance with local rules is a rouse and gravely misplaced.

WHEREFORE, it is respectfully requested that the Court grant Plaintiffs' their requested relief.

Dated: July 13, 2004

Respectfully submitted,

/s/ Bjorn J. Holubar
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